

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)
)
LSH FINANCIAL MANAGEMENT) Case No. 98-01197
SYSTEMS, INC.,) (Chapter 11)
)
Debtor.)

DECISION RE AMBIGUITIES IN PLAN OF REORGANIZATION AND ORDER
GIVING PARTIES 14 DAYS TO OBJECT TO COURT'S PROPOSED RESOLUTION

The debtor has submitted a proposed order together with a letter and attachments thereto regarding the Third Amended Plan of Reorganization filed by the Debtor ("the Plan") on July 25, 2000. The court is unable to sign the proposed order as submitted because the Plan is ambiguous on several points. The court sets forth below the ambiguities and the court's perception as to how the parties would likely desire the ambiguities to be clarified, and has attached a draft of an order that would resolve the ambiguities in that fashion. The court will give the parties 14 days to object to the court's proposed order.

I

The administrative claim of the Internal Revenue Service is in the amount of \$1,789.50 together with interest that has accrued on that claim since June 18, 2000. The debtor's proposed order called for payment of \$1,789.50 without providing for the payment of interest that was requested on the request for payment of the claim.

II

The Plan provides that each holder of a claim of a kind specified in 11 U.S.C. § 507(a)(8) will receive full payment of

the allowed amount of such claim, together with post-confirmation interest at the rate of 8.5% per annum, by way of equal monthly installments over a period of six (6) years, commencing 60 days from the entry of the confirmation order. The allowed § 507(a)(8) claim of the Internal Revenue Service equals only \$140,807.29. The balance of its \$180,682.70 allowed claim is an unsecured claim, not entitled to § 507(a)(8) priority, for penalties and interest on penalties. Although the Plan stated that the debtor "believes" that the claim stood at \$221,000 for "withholding taxes and including interest and penalties," that belief would not suffice to make the claim for penalties (and interest on penalties) a § 507(a)(8) claim. Accordingly, the court believes the Plan should be interpreted as treating only the \$140,807.29 as entitled to § 507(a)(8) treatment. The balance of the claim will be entitled to payment under the provisions of the Plan regarding general unsecured claims.

The court has thus revised the debtor's proposed order in that regard.

III

The court's proposed order notes that 60 days after entry of the confirmation order, the Internal Revenue Service will be owed \$1,967.44 in interest plus the \$140,807.29 for a total of \$142,774.73 on its § 507(a)(8) claim. The debtor desired that the amount of monthly payments be calculated in the confirmation order. Apparently for ease of computation, the debtor's proposed order treated the aggregate amount that would be owed, on the

60th day after confirmation, with respect to the § 507(a)(8) claim (both the allowed claim and the postconfirmation interest accrued on the allowed claim) as a principal amount upon which interest would then be paid. The court's proposed order continues this treatment.

IV

The court continues verbatim the proposed order's treatment of the secured claim of Key Capital Corporation ("Key Capital's Secured Claim") with two changes.

First, the recitals regarding the claim are combined with the decretal portion of the Order.

Second, where those recitals refer to the claim as being in the amount of \$132,180.38¹ and that it shall be paid in full, the court has clarified that

The secured claim . . . recited by the debtor to be in the amount of \$132,180.38, and interest and additions thereon as provided by nonbankruptcy law, shall be paid in full

This is consistent with paragraphs viii and ix of the provisions of the debtor's proposed order that set forth the agreed treatment of Key Capital Corporation which direct that Key Capital is entitled to payment of all indebtedness owed under the Loan Documents and Key Capital's Secured Claim. The court does

¹ The court is not certain whether the \$132,180.38 is a recitation of the amount owed on Key Capital's claim as of the petition date or as of the hearing on confirmation. But it is clear that Key Capital intends to be able to collect the full amount of its claim as would be calculated under nonbankruptcy law. So the proposed order should not be read as altering the amount owed Key Capital.

not believe that the parties intended Key Capital's Secured Claim to be frozen at \$132,180.38.

V

The debtor agreed on the record at the confirmation hearing that holders of general unsecured claims would receive at least 25% of the allowed amounts of their claims and at least \$11,000 per quarter for 12 quarters commencing one year after confirmation. Accordingly, the court has revised the provision regarding general unsecured claims to recite:

Unsecured claims not entitled to any priority of payment under 11 U.S.C. § 507(a) shall be paid a total of at least \$132,000 and at least 25% of the allowed amount of such claims (that is, the greater of those two amounts) over 3 years in 12 equal quarterly payments beginning one year after entry of this order.

VI

The proposed order was both underinclusive and overinclusive about what property would be revested in the estate upon conversion to chapter 7. On the one hand, not just property held on the petition date would revest: for example, proceeds of such property would also revest. On the other hand, property the debtor had sold after confirmation and before conversion would not be sucked back from the purchaser upon conversion. The debtor should have the freedom (subject to the rights of creditors under fraudulent conveyance law) to deal with its property postconfirmation without the necessity of obtaining court approval of the disposition of the property. Nor should postconfirmation capital contributions be property of the estate. Accordingly, the court's proposed order directs that it is

ORDERED that should this case be converted to a case under Chapter 7 of the Bankruptcy Code, all of the debtor's legal or equitable interests, as of the date of conversion, in property that would have been property of the estate had the property of the estate not vested in the debtor by virtue of confirmation of the plan, shall be property of the estate for purposes of the chapter 7 case, notwithstanding the vesting of the property of the estate in the debtor that otherwise arises upon confirmation of the plan; and, by way of illustration and not limitation, such property shall include all proceeds held by the debtor, on the date of conversion, of property that was property of the estate prior to confirmation of the plan.

VII

In accordance with the foregoing, it is

ORDERED that the parties shall file any objections to entry of the court's proposed order of confirmation attached hereto within 14 days after the entry of this Decision and Order.

Dated: December 6, 2000

S. Martin Teel, Jr.
United States Bankruptcy Judge

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